

# **Gaining Compliance and Enforcement Partnership Issue Paper**

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## **Introduction**

This issue paper is part of a joint effort between LEA and CIWMB staff to chronicle how compliance is achieved at solid waste facilities, identify problems or barriers to achieving compliance or taking enforcement, and present ideas for solutions that would solve these problems. The main step of the partnership process on compliance will be to present this information to Board Members of the CIWMB for discussion, feedback and direction.

The overall issue can be characterized by a series of questions. How do the CIWMB and LEAs define and assess compliance? What is the relationship between an educational/compliance first approach to deterring and preventing problems, and a stringent enforcement and penalty approach when problems do occur? How can we measure and compare these different approaches and their outcomes?

## **History**

In August 2003 the Partnership 2000 workgroup met to prioritize issues on Enforcement and Inspections. The top three issues included:

- Belief that CIWMB should acknowledge education as the cornerstone of compliance
- Current methodology lacks a clear definition of compliance and a method to measure compliance and EA performance
- Inadequate hammers to levy fines.

During the 2004 LEA/CIWMB Conference, the Gaining Compliance workgroup determined that inspectors use a variety of methods to reduce violations and focused primarily on a model that achieves compliance by relying on education and cooperation. The workgroup also discussed enforcement options available under other programs such as the CUPA in order to assess applicability to solid waste laws.

In September 2004, the work group met to discuss what gaps for enforcement exist in the current system in order to focus on possible solutions to resolve barriers. These included:

- No way to measure compliance
- Cumbersome enforcement process
- Education and training not consistent
- Multi-media coordination lacking
- Publicity examples not available
- Legislative barriers

## **Next Steps**

After discussion with the California Conference of Director of Environmental Health's Solid Waste Policy Committee, the Enforcement Advisory Council, participants at the 8<sup>th</sup> Annual LEA/CIWMB Partnership Conference, and Permitting and Enforcement management, the working group will present this information to the Permitting and Enforcement committee or at a workshop. The group will be looking for direction and workable solutions in those areas identified as gaps.

## **Compliance and Enforcement System**

When dealing with enforcement there are several approaches to gain compliance: a widely used informal compliance approach which relies on education and cooperation between the LEA and operator, and then the more formal enforcement penalty approach. Both methods are addressed below.

### **Compliance First Approach**

An approach that many LEAs adhere to was presented by the Orange County LEA at the LEA/CIWMB Conference in 2004. The Orange County LEA currently utilizes a model that places an emphasis on training and preventing violations. This places the focus and resources on the majority of facilities in the State that are consistently in compliance. The goals of this model are to obtain consistent long-term compliance at solid waste facilities, ensure that solid waste operations are not creating a nuisance, hazard, or threat to public health and the environment, provide efficient and effective use of LEA resources, and ensure that on any given day a solid waste facility can pass a CIWMB inspection.

The three steps of this approach to achieve consistent compliance at solid waste facilities include:

- On-going education and training for inspectors, management, operators and when applicable, the planning department.
- Use the inspection report to provide sufficient details on any actual or potential regulatory violations and whenever possible, provide positive comments about the operations.
- Establish relationships between inspectors and operators based on mutual respect and involve the LEA learning the operations beyond what is needed to do an inspection.

To make this compliance first model successful, the LEA assists the operator directly whenever possible by reviewing draft documents and letters, research regulations and procedures for the operator, helping the operator through the sometimes very confusing regulatory process, and obtains assistance from the CIWMB as appropriate. Unless staffing limitations prevent it, inspection and enforcement staff should rotate among facilities so that they can maintain an objective perspective of the operation by stepping away from the site periodically and allow fresh viewpoints from fellow inspectors.

Conversely, if staffing is limited, inspection and enforcement staff can and should gain fresh perspectives by attending inspections in neighboring jurisdictions.

Overall, for 95-97% of solid waste facilities and operations, the “cooperation model” achieves its objective of assuring well-run solid waste facilities in substantial compliance with regulations. Of the 976 active facilities and operations in the State, approximately 33, roughly 3%, are undergoing some form of formal action. Underlying this statistic however, is a question of whether many more facilities should be subject to enforcement as described in the section “Measuring Compliance”.

## **Enforcement/Penalty Approach**

When cooperative efforts fail to correct violations or prevent threats to public health and safety and the environment, stronger measures are required. An LEA will have to assume a command-and-control stance by utilizing penalty provisions.

It is not always clear where the threshold is between the compliance first/education approach and the enforcement penalty approach. Advisory 38 raised the issue of thresholds between compliance and enforcement. The advisory provided detailed descriptions and instructive interpretation of the various enforcement options available to remedy violations at solid waste facilities. Portions of the Advisory have already been incorporated into regulation. Some LEAs use their Enforcement Program Plan to determine when they will move from one action level to the next. Others follow guidance from the CIWMB staff that follows the statutory or regulatory scheme to determine next steps. Overall, most enforcement actions are taken when a facility or operation is in violation of Permit Terms and Conditions, operating illegally, or violating state minimum standards with the majority falling into Permit enforcement.

More discussion on the topic of consistent application of enforcement strategies will be discussed in the next section.

An example of an enforcement/penalty approach lies within the CIWMB’s Enforcement Agency EPP – at hyperlink [Enforcement Assistance Enchiridion--Chapters 3-4](#).

This approach, detailed in Appendix 1, describes a sequence for taking action at a facility up to and including penalties and fines. The steps correspond with the circumstances discovered at the site unless a more expeditious process is warranted. This sequence follows guidance and regulatory schemes set up by the CIWMB.

While the steps outlined in the Board as EA’s EPP present a sound process, there are barriers that the Board members and CIWMB staff have been made aware of during the processing of permits and through the routine work they do alongside LEAs.

One underlying issue continues to surface regarding appropriate and timely enforcement of permit terms and conditions – how long should the LEA wait to issue a cease and desist (for the activity in violation, not the entire site unless warranted) upon discovery of

the violation such as exceedence of tonnage or vehicle limits. Subsequently what actions should the LEA take when compliance dates have passed?

## **Problems and Program Gaps, Ideas for Solutions**

This next section discusses general categories where the working group identified specific needs for change. By doing so, the group listed the need, described the problem that is caused by the gap, and then offered a solution to address the need.

### **Problem: *Cumbersome Enforcement Process - LEA perspective***

When dealing with non-complying facilities, there are barriers in the current enforcement system that limit enforcement or even discourage enforcement. Many LEAs have long believed that the current enforcement process is difficult to use or cumbersome and basically drains LEA resources by allowing the operator to appeal enforcement orders including the orders that impose penalties. The existing enforcement mechanism allows operators to appeal, essentially indefinitely, while pursuing compliance, all of which taxes LEA resources and discourages formal enforcement. While the process is clearly spelled out in regulations and technical assistance is provided by the CIWMB staff when appropriate, it still may be difficult to utilize those processes locally. For example, LEAs may opt not to pursue this approach when the amount of a potential fine at the end an enforcement process (including possible appeals, courts actions, time during which compliance isn't achieved due to the dispute) is weighed against faster and less resource draining informal resolution of the issue(s).

This concern was partially addressed by AB2159 which shortened timeframes for appeals of enforcement orders at permitted facilities, established an option to hear appeals before a hearing officer instead of a panel, and removed the stay of an order during the appeal process for unpermitted sites. However, the stay of an enforcement order while moving through the appeal process still applies to permitted sites.

Further, some potential solutions could be gleaned from the CUPA model which has many attributes:

- ✓ very time efficient,
- ✓ the procedures are clearly stated with flow charts and if / then boxes,
- ✓ defined roles and responsibilities,
- ✓ progressive enforcement options,
- ✓ a settlement process option,
- ✓ a streamlined hearing process,
- ✓ detailed penalty calculations, and
- ✓ limits to the appeal process (Judicial Review only).

### **Solution 1: *Changes to Law and Regulations, Standard Forms***

To the extent that the laws and regulations can make processes for taking enforcement action more efficient, the more likely it will be that they will be used. Once used a few

times, this should have the effect of making informal compliance efforts that much more likely to work (deterrent effect).

Some potential changes to provide for an effective enforcement model include:

1. Provide specific timelines in regulations to follow (some of these could allow for some flexibility if justified). For example:
  - Violation Citation
  - 30 days to fix
  - If not fixed – automatically must issue an order
  - 30 days to comply
  - If no compliance, automatic fines

This timeline would need to be in regulations.

2. Provide standard fill in the blank forms for Orders in the regulations (like Judicial Council Forms for civil filings).
3. Legislative Changes (see “*Legislative Process Barriers and Solutions*” in Appendix 2 for additional discussion).

### **Solution 2: Other State Enforcement Approaches**

When assessing enforcement issues it can be useful to look at the programs of other states. In doing this, however, it must be remembered that in every state except California, all environmental programs are contained within one state environmental agency.

Two States that have assessed large monetary penalties for enforcement actions are Pennsylvania and Texas. In Pennsylvania all enforcement actions are appealable by the operator or the public to an environmental hearing board composed of attorneys appointed by the governor. The exception is that an inspector can generally issue a notice of violation without an appeal.

Pennsylvania has a “penalty matrix” that is used for arriving at a penalty and fine amount. This matrix takes into account the degree of severity of the violation, the degree of willfulness to violate and the type of violation. In addition, there is a Pennsylvania “Standards and Guidelines for Identification Tracking and Resolving of violations” that spells out the entire enforcement process in detail.

Pennsylvania uses the matrix and guidelines at each solid waste facility to assess penalties and fines. Its Solid Waste Management Act allows a maximum of \$25,000 per day per violation. The matrix is used to determine the monetary percent for each violation. On big sites with multiple violations over a long period of time fines can add up to hundreds of thousands of dollars in some cases.

Texas also has a Penalty Policy Matrix for all media including waste air and water. To go along with the matrix they also have a “penalty calculation worksheet”. When a penalty is determined “enforcement coordinators” negotiate with the operator and offer

20% off the penalty for working through environmental coordination instead of going through litigation.

Big penalties are usually assessed to big waste companies with multiple violations over several years. Fines can again, using the penalty calculation worksheet, add into the hundreds of thousands. It is interesting to note that Texas usually does only yearly inspections on the big sites and relies heavily on reports from the operators.

**Problem: *Measuring Compliance***

Some stakeholders, including regulators, the public and some operators, contend that LEAs and Board do not enforce the laws and regulations strongly enough because there are few, if any, fines imposed or collected. This raises the issue of how does the Board and the LEAs actually measure compliance.

While measuring the total tally of fines and penalties could lead to a valid measurement, the working group also found a need to measure the value of time, efforts and resources expended through less formal actions that result in compliance with the regulations, before formal enforcement activity becomes necessary. In many cases, the time spent to achieve compliance informally resulted in greater efficiency, savings, and benefits to the public and the environment. In contrast, enforcement actions processed within the constraints of the current system are very costly and resource intensive for local and state government.

**Solution: *Determine Percentages***

One suggestion would be to measure the percentage of facilities that are not cited for violations, the percentage of facilities that are cited but then return to compliance, and the percentage of facilities that are issued enforcement orders and then comply. In other words, compare different approaches to achieve compliance for the same type of violation to see if the results are the same with the less stringent approach. Still, any method used would need to distinguish between those operators that complied on their own and those that had help or prodding by the LEA.

Some methods for measuring informal compliance efforts could validate the tactic that employs education and training. In order to be effective and useful, the compliance measurements would need to be quantifiable, easy to track, easy to collect, and not raise other issues of concern.

Additional parameters that may augment or complement include:

1. Track Orders Issued
2. Track Violations out of SWIS
3. Track Areas of Concern out of SWIS
4. Track number of facilities without any violations or Areas of concern in a specific time period



5. Track CIWMB inspections that verify LEA inspections results
6. Have CIWMB randomly inspect facilities other than active landfills in each LEA jurisdiction
7. Post LEA performance evaluations results

One disadvantage of a focus on facilities is objections by operators regarding publicizing potential non-compliance (for example, concerns they've expressed about inspection reports noting violations that haven't been embodied in a Notice and Order). However, some of the measurements suggested above could prevent these objections while allowing for a measurement of enforcement/compliance efforts.

**Problem: *Lack of Publicity That Could Aid Local Efforts***

Some stakeholders have suggested that media publicity may help in the deterrence of illegal and illicit operations and thus overall compliance may be a result when violators or violations are publicized either in the local media or on a website that tracks violations. This means that if the jurisdiction publicizes illegal activities, or as needed on facilities with reoccurring violations; the undesired publicity may spur overall industry efforts to prevent problems and maintain compliance. Most likely, the illegally operating business will know that its actions will be publicized and that type of message is usually unwelcome and thus acts as a deterrent to others.

This is based in part on a premise that many business owners or operators who operate illegally, chronically cause violations, or who seem to be on the un-ending track of enforcement order after enforcement order, experience few repercussions of their behavior. In addition, the type of person who willingly begins an illegal operation experiences little impact when caught under the current methods, except for being often ordered in writing to cease and desist. Most violators hedge their bets that the cost of getting caught is less than the monetary gain they enjoy by violating laws and regulations.

Several state and local agencies have experienced a reduction in illegal, criminal and negligent behavior when the agency begins a publicity campaign. For instance, one jurisdiction publicizes the results of their restaurant inspections in total on their website. They also alerted the local media that they would be making this information available to the public. Not only did this provide the general public with a level of awareness of which restaurants might not have the healthiest practices, it served as notice to the industry that their violations might hurt their bottom line.

Additionally, at the onset of publishing the CIWMB's Inventory of Solid Waste Facilities that Violate State Minimum Standards (Inventory) in the late 1980's, the impact of being on that list was tremendous. Many of the chronic violators began to clean up their conditions in order to avoid being listed. As of this writing, fewer sites end up on the Inventory mostly due to fewer sites with long term violations and also due to the Industry's familiarity with the Inventory. The state and LEAs may need to look at other methods to prevent those who negligently violate the law by establishing illegal operations or who intentionally violate the terms of the governing permit.

***Solution: Involve Local Media, Publish Results***

Encourage local jurisdictions to develop a method beyond the State's current practice of publishing the Inventory and Enforcement Actions. This would involve posting information on the local jurisdiction's website where the public can view details of illegal operations, chronic violators and other activity that needs to be deterred. Additionally, this method could be shared with local franchise haulers so that they can become aware of what sites are in violation of the standards or permit.

Should this proposal be included as a priority, then staff could work with LEAs and the CIWMB Office of Public Affairs to develop options for an approach that will be circulated to staff, the EAC, CCDEH and finally to the Board.

***Problem: Need for Increase in Formal Education and Training***

LEAs and board staff spend valuable time working on enforcement/compliance issues with operators. The data for compliance at landfills shows that most landfills are operating in compliance with State Minimum Standards for Solid Waste Handling. However, since the adoption of the flexible tiered framework of regulatory oversight in 1995, the type and number of solid waste facilities other than landfills has greatly expanded. In 1994 the infrastructure had 13 activity types such as landfill, transfer station

or transformation facility. By 2004 this number had blossomed to 51 activity types including all the new categories for construction, demolition and inert activities, chipping and grinding of organic material, or biosolid composting. Companion with the tiers and activity types, the number of permit activities grew from just 20 Full Solid Waste Permits processed in 1993 to a breakdown of 2004 numbers that includes 30 full permits, 1 Standardized, 20 Registration and 123 Notification tier permits. Over the eleven year span, LEAs processed 193 Full SWFPs, 40 Standardized, 128 Registration and 420 Notification Tier permits.

The data listed above shows that LEAs are spending a high percentage of time enforcing statutes and regulations at facilities other than landfills (landfills fall into the Full Permit Tier and the other tiers are used for the other types of facilities and operations). Many of the operational problems observed throughout the state result from a lack of focused operator and inspector training in these areas.

There is currently a gap in the level of information and training for solid waste professionals in the area regulated under the tiered structure such as, transfer processing operations & facilities, compostable materials operations & facilities, Construction, Demolition and Inert processing operations and facilities.

***Solution: Provide Increased Training Opportunities for LEAs, Industry and Inspectors***

Education and training can play a major role in achieving compliance at solid waste facilities. When an operator understands the public health and environmental impacts of their activities, they frequently put forth the effort to abide by the regulations. The operator is also influenced to abide by regulations when they are fully educated about the potential impacts of formal enforcement whether it is from imposed fines or negative community perception regarding their business.

It is critical that LEA staff be trained to stay current with regulatory changes and public health and environmental principals so that they can convey accurate information to an operator. However, the LEA should not be the only source of education for an operator. Outside educational venues are important for both the operator and the inspector. For example, in recent years landfill operators have been participating in landfill management training. Education and training should not be limited to landfills only, but needs to be extended to transfer stations, CDI, composting facilities, pile management, ADC and other diversion-driven activities. All parties recognize that joint training is a critical component to compliance. Board members discussed this issue at the April Permitting and Enforcement Committee Meeting and staff will bring another item forward regarding expanded training options during the summer months.

***Problem: Need for Increased Multi-Media Coordination When Appropriate***

Regulation of California's landfills is primarily shared among the following agencies:

- The State Water Resources Control Board (SWRCB) promulgates water quality protection regulations that are enforced at the local level by nine Regional Water Quality Control Boards (RWQCB).
- 35 air districts have primary authority to regulate emissions from landfills and are responsible for developing and enforcing air quality regulations. The Air Resources Board provides technical support to the districts and oversees local district compliance with State and federal law.
- CIWMB promulgates regulations for other aspects of solid waste disposal. These regulations are enforced at the local level by 54 LEAs or the CIWMB when serving as the EA.

Because each agency has specific areas of authority, there is a need for coordination amongst the agencies in order to have a comprehensive understanding of what is happening at landfills.

In some cases, LEA, CIWMB, RWQCB and Air District staff might not be aware of each other's efforts to gain compliance at a solid waste facility for the media under their respective authority. In this scenario, an operator might be confused as to which entity's request to obey first in the case of conflicting information. Regulatory agencies should not leave it to the operator to sort out compliance when there is a multi-media aspect involved.

### **Solution: *Continued Coordination***

Areas of coordination that could have a positive effect on compliance include inspections, review of monitoring reports, enforcement actions, permits (WDRs and SWFPs), review of closure plans and other technical documents, regulation development, and media/outreach. For instance, LEAs and RWQCBs should be aware of actions being proposed by each other to correct compliance problems when both agencies are affected, including any proposed construction and changes to monitoring programs, and should coordinate with one another in the development of a plan to correct compliance problems. A good example of this is the need for the LEAs and RWQCBs to coordinate in the design, installation, and operation of the landfill-gas control and monitoring systems. Section 20425(d) (3) of Title 27 requires the RWQCB to coordinate with the LEA as appropriate when landfill gas is involved. Air districts would also need to be included if their program would be affected.

Coordination is already occurring to some degree, but it is unclear to what extent and in what program areas. To get a better understanding of what is happening statewide, staff from the SWRCB and CIWMB met with RWQCBs and LEAs to discuss the need for coordination, solicit ideas on where and how to coordinate, and identify what could be workable. To enhance communication and coordination, it was suggested that LEAs share inspection reports and coordinate an occasional inspection with the RWQCB, and have quarterly meetings and/or invite the RWQCB staff to attend a LEA Round Table. Another improvement to coordination is the current effort by the SWRCB to make documents more accessible with electronic filing. SWRCB will have more data

available on their website beginning in July 2005, when paper submittals will no longer be required

Additional recommendations for greater coordination will be presented at the LEA/CIWMB 8<sup>th</sup> Annual Conference in May.

## Appendix 1

### **Example of Action Level Sequence for an Enforcement/Penalty**

**Approach** – Excerpt from CIWMB's Enforcement Agency Enforcement Program Plan

#### **3.3 Enforcement Options**

*Enforcement actions should correspond to the following action level sequence unless circumstances warrant a more expeditious process. The action levels below are consistent with the CIWMB's Enforcement Policy provided in LEA Advisory No.38.*

##### **3.3.1 Action Level A**

- *Compliance Request: Request operator, by telephone or written correspondence, to correct and prevent recurrence. A memo of each telephone contact or a copy of the correspondence should be sent to the facility file.*
- *Warning Notice: A notice mailed or issued at the time of inspection using the applicable inspection form (e.g., Disposal Site Inspection Report--CIWMB-52, Transfer/Processing Facility Inspection Report--CIWMB-53, etc.) identifying violations. This notice should include a compliance date and should be signed by the facility owner or operator.*
- *Compliance Meeting: EA Section staff schedule a formal meeting with the operator and appropriate regulatory agencies to discuss specific violations and compliance methods. All parties to this meeting should agree on a specific schedule for corrective measures. It should be made clear that failure to comply with the corrective measures agreed to at this meeting may result in further enforcement action.*

##### **3.3.2 Action Level B**

- *Notice of Violation: A written notice/letter sent to the owner/operator containing a summary of the violation(s) documented during an inspection. This notice requires a written response from the owner or operator, within an established time limit, summarizing the actions which have or will be taken to correct the reported violation(s).*
- *90-Day Notice of Intent (NOI): Any facility, which has a repeat violation for the same standard(s) during two successive months, will be issued an NOI letter. The NOI will indicate which standards continue in violation and gives the owner/operator 90 days in which to correct the violation(s).*

##### **3.3.3 Action Level C**

- *Notice and Order: This action is an order issued pursuant to PRC 45000, 45005, and/or 14 CCR 18304, requiring the owner/operator to take corrective action*

*and/or cease and desist from an illegal activity and to clean up or abate any condition resulting from that activity. It is normally issued when corrective action(s) can be completed within 90 days.*

- *Stipulated Order of Compliance and Agreement: This action is issued pursuant to 14 CCR 18304, to correct SWFP violations and directing action(s), which usually require more than 90 days to correct. This order constitutes a contract between the EA and the owner or operator.*

*[Notice & Orders and Stipulated Orders are to be reviewed and signed by the Legal Office and signed/issued by the Deputy Director. A copy of the issued enforcement order is to be sent to the owner and operator, via certified mail, within five business days of issuance. Orders (Word 6.0, 46 KB or Adobe Acrobat PDF, 53 KB) prepared by EA Section staff contain the information as required by 14 CCR 18304(b).*

- *Inventory of Solid Waste Facilities Which Violate State Minimum Standards (Inventory): If the owner or operator has not corrected a violation(s) within 90 days from the date the NOI was received, the EA Section will include the facility in the Inventory. Upon including a facility in the Inventory, EA Section staff will develop a compliance schedule pursuant to PRC 44106(a).*

#### **3.3.4 Action Level D**

*If an owner/operator fails to comply with the actions specified in an enforcement order, the EA Section will pursue implementation of the notices stated in the order, including, but not limited to:*

- *Contract for Corrective Action: If an owner/operator fails to take corrective action by the date specified in an enforcement order, the EA Section will recommend the CIWMB contract to have the corrective action completed by a third party {PRC 45000}.*
- *SWFP Suspension or Revocation: Subsequent to the failure of all other enforcement actions, the EA Section will pursue action through the hearing panel process to suspend or revoke the SWFP {PRC 44106(b), 44305, 44306, 14 CCR 18307}.*
- *Petition the Court: Through the Legal Office, petition the superior court to enjoin violations or impose upon the owner, operator, or both, civil penalties in an amount not to exceed \$10,000 for each day of violation occurring after a specified date {PRC 45023}.*
- *Administrative Civil Penalties: If an owner/operator fails to attain compliance by the time schedule in an enforcement order, EA Section staff may request civil penalties be imposed administratively {PRC 45011}.*

- *State Attorney General Referral: A referral to the Attorney General to petition the court on our behalf.*
- *District Attorney Referral: A referral to a District Attorney to petition the court on our behalf.*

### ***3.4 Guidelines for Response to Noncompliance***

*Responses to instances of noncompliance should generally be initiated considering the following guidelines, unless the seriousness of a particular noncompliance warrants a more expeditious response.*

- *Action Level A: After discovery of noncompliance.*
- *Action Level B: Following determination of failure to comply with Action Level A.*
- *Action Level C: Following determination of failure to comply with Action Level B. Note: Several enforcement actions may be taken within Action Level C. Each action should carry with it a time frame for initiating action.*
- *Action Level D: Following determination of failure to comply with Action Level C.*

### ***3.5 Selection of Appropriate Enforcement Action***

*The following criteria should be considered in selecting an appropriate enforcement action:*

- *Degree of risk to public health and safety or the environment;*
- *History of violations;*
- *Degree of cooperation or recalcitrance exhibited by the owner/operator;*
- *Culpability of the operator;*
- *Financial resources of the owner/operator;*
- *Whether the circumstances leading to the noncompliance have been corrected;*
- *Whether the violations are likely to continue;*
- *Whether the violation can be remediated;*
- *Need to take immediate cleanup action; and*
- *Any economic benefit realized by the owner/operator as a result of the noncompliance.*



## Appendix 2

### Detailed Information on Legislative Process Barriers and Solutions

The working group delineated a number of potential legislative changes that would increase the authority of the CIWMB and LEAs to take enforcement actions. These are categorized and briefly described below.

#### 1) Increase CIWMB and LEA Authority to Take Enforcement Actions

*Problem:* The CIWMB has limited ability to take direct enforcement action when it is not acting as EA. In addition, enforcement authority for both the CIWMB and LEAs focuses on owners and operators of solid waste facilities but does not address other entities that may violate provisions of the Integrated Waste Management Act.

*Solution:* Consider legislative concepts that would authorize direct CIWMB enforcement, prohibit illegal disposal of solid waste, and expand CIWMB and LEA authority to take enforcement actions against other persons who are in violate of the IWMA.

#### 2) Increase Types of Penalties

*Problem:* Existing enforcement tools, although enhanced by recent legislation, are still not sufficient for LEA use in taking all appropriate enforcement actions against permitted facilities that are in violation of the IWMA and against illegal sites. For example, AB 1497 removed the \$15,000 annual cap on administrative civil penalties, but an enforcement agency may only impose such a penalty (\$5,000/day) if compliance is not achieved in accordance with a time schedule established as part of a corrective action or cease and desist order, or any other order, or the facility or disposal site poses a potential or actual threat to public health and safety or the environment. In addition, LEAs do not have authority to issue tickets/infractions for minor violations, an effective enforcement tool that is easy to implement. Violations of solid waste laws are not crimes, so EAs cannot use criminal penalties in enforcing solid waste laws. Criminal enforcement is deserved in certain cases and would have a strong deterrent effect on prospective future violators.

*Solution:* Consider legislative concepts that would authorize LEAs to issue tickets for minor violations of SWF permit conditions and State Minimum Standards, broaden the applicability of civil penalties to any IWMA violation, and establish criminal penalties.

#### 3) Modify the AB 59 Appeal Process

*Problem:* Current law enables solid waste facility operators to challenge an enforcement order or other determination of the EA by appealing it to a local hearing panel and subsequently to the CIWMB. AB 2159, which became effective January 1, 2005, speeds up the process of getting to the first hearing of an appeal (although that hearing may be continued indefinitely), but an automatic stay will still apply except: 1) in cases of imminent and substantial threat, and 2) where a solid waste facility is operating without any permit at all or outside the boundaries specified in a permit where the operator has not applied for (or has been denied) a permit prior to the issuance of the cease and desist order. In addition, the local hearing panel process is costly and time-consuming and can act as a detriment to effective enforcement. The automatic stay provisions and the availability of appeals to local hearing panels increase the cost and complexity of carrying out enforcement, substantially delay enforcement, and in some cases, create disincentives for enforcement.

*Solution:* Consider legislative concepts, some controversial, that would eliminate the automatic stay of enforcement orders pending conclusion of appeals, while still providing for operators' due process rights; eliminate local hearing panels and instead provide for appeals directly to the Board; and eliminate provisions which excuse complainants from the duty to exhaust administrative remedies prior to seeking judicial resolution of disputes.

#### **4) Establish CIWMB and LEA Authority to Impose Environmental Restrictions**

##### **After Remediation:**

*Problem:* With the exception of burn dump sites, the CIWMB and LEAs do not have the authority to impose "environmental restrictions" (i.e., real covenants that run with the land) on properties where other solid wastes remain in place after limited remediation. Consequently, in those cases, buyers of land containing solid wastes may not know they are buying a potential environmental problem or that the land they are buying may not be suitable for certain uses. In contrast, existing law authorizes DTSC and the SWRCB/RWQCB to impose "environmental restrictions" on properties where wastes remain in place, generally after limited remediation.

*Solution:* Consider legislative concept that would authorize the CIWMB, when it has approved remediation of solid waste disposal sites where solid waste will remain in place, to impose environmental restrictions on real property.

#### **5) Revise requirements for revoking a solid waste facilities permit.**

*Problem:* The process for suspension or revocation of a SWFP sets the bar impossibly high to effectively use this tool. Suspension requires a finding of significant or imminent and substantial threat to public health and safety or to the environment for immediate temporary suspension. Neither of these terms is defined, and due to the subjective nature of these terms, it is difficult for an inspector/LEA to prove that level of threat. Additionally most of the minimum standards address public nuisances not public health threats. Revocation of a SWFP is possible only if: a) the permit was obtained by misrepresentation or a failure to disclose, or b) the Operator has been issued a final order and continues to violate such that there is a chronic recurring pattern of non-compliance, which has posed or may pose a significant risk to public health and safety or to the environment.

*Solution:*

#### **6) Provide LEA's More Tools To Use Regulatory Permit Tiers**

*Problem:* LEA enforcement tools are limited in lower regulatory permitting tiers. LEAs have limited ability to control registration permit approval. Permit conditions cannot be placed on registration permits. Therefore, these permits are not discretionary. If the permit package is complete (minus any CEQA compliance finding or land use approval finding), the permit is issued. In addition, LEAs have limited ability to control EA notification "approval".

*Solution:*